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BLACK LUNG PROGRAM

Further Improvements Can Be Made in Claims Adjudication



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Human Resources Division

B-203632

March 21, 1990

The Honorable Austin J. Murphy
Chairman, Subcommittee on Labor Standards
Committee on Education and Labor
House of Representatives

The Honorable Alan B. Mollohan
House of Representatives

The Honorable Frank McCloskey
House of Representatives

The Honorable Rick Boucher
House of Representatives

The Honorable George Miller
House of Representatives

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This report responds to your requests for information about the Department of Labor's Black Lung Disability Benefits Program. You raised concerns about possible difficulties miners were encountering in applying for benefits and asked that we provide information on several aspects of the application and approval process. In addition, you requested information on the program's trust fund.

The program, which the Congress established in 1969, provides compensation to coal miners or their survivors for total disability or death caused by black lung disease (pneumoconiosis or chronic respiratory disease resulting from coal dust exposure). In fiscal year 1988, 84,782 miners or their survivors were on the benefit rolls and were paid about \$602 million in benefits under part C of the program (covering claims filed since 1973) (see app. I).

Miners and their survivors apply to the Department of Labor (DOL) for black lung disability benefits. Mine operators who are determined responsible for the disease pay benefits. If DOL does not identify a responsible mine operator, the Black Lung Disability Trust Fund pays benefits out of revenues generated by an excise tax on coal sales. Dissatisfied parties (usually miners or coal mine operators) may appeal initial decisions to administrative law judges (ALJs). Further appeals may be made to DOL's Benefits Review Board (BRB) and the federal courts.

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In response to your requests, we (1) determined the percentage of claims approved and denied, (2) discussed with experts the adequacy of the medical criteria DOL uses to determine black lung disease and total disability, (3) identified the average time DOL takes to adjudicate claims, (4) evaluated the procedures used to collect overpayments of benefits, and (5) obtained data on the status of the Black Lung Disability Trust Fund.

Methodology

Using DOL automated data, we (1) determined the percentages of miner claims approved by DOL for each of the eligibility criteria and (2) identified the average time DOL took to process claims. While we discussed this data with DOL officials, we did not determine the accuracy of the automated data.

We discussed the adequacy of DOL's medical eligibility criteria with doctors considered black lung experts, DOL officials, and black lung associations.

In reviewing DOL's overpayment policies and procedures, we (1) held discussions with DOL officials, (2) examined selected case files, and (3) compared the costs to collections of overpaid amounts during fiscal year 1988 and the first 3 quarters of fiscal year 1989.

We summarized DOL's statements reporting trust fund activity. For this analysis, our primary data source was DOL's status of funds reports. However, we did not determine the accuracy of these reports.

Our review began in October 1988 and concluded in August 1989. Except for the limitations discussed above, we carried it out in accordance with generally accepted government auditing standards.

Results in Brief

Except for claims filed¹ during a 2-year period (March 1978-March 1980) in which DOL used more liberal eligibility criteria, only a small percentage of miners have obtained black lung benefits. Excluding

¹Filed claims include previously denied claims that were required to be re-reviewed. This also includes claims pending when the new criteria went into effect.

that 2-year period, DOL's approval rate between 1973 and 1988, including appeals, has been under 10 percent.² Of all claims approved by DOL, about 90 percent were adjudicated under criteria in effect during that 2-year period.

The program's current medical criteria for determining the existence of black lung disease and total disability were implemented in 1980 and 1981. Medical experts term the standards for interpreting tests and the instructions for performing the tests as reasonable.

Claimants appealing DOL's initial decisions have experienced lengthy delays while their cases awaited processing at the ALJ and BRB levels. Delays at the ALJ level should be reduced beginning in 1990, because the backlog of cases will be reduced. However, lengthy delays will continue at the BRB level unless additional steps are taken to reduce the backlog of cases there.

DOL's settlements of overpayments resulted in (1) substantially more dollars collected than dollars spent, and (2) consistent decisions in the three offices we visited. However, DOL's initial overpayment notices to claimants do not fully explain the options available to them in having their overpayments forgiven.

While the ratio of coal taxes to program costs has improved, the black lung trust fund continues to operate at a deficit. The deficit is covered by borrowing from the federal government's general fund, to which it owed about \$3 billion at the start of fiscal year 1989. Mainly, this is because liability for nearly all the claims approved under the liberalized criteria was assigned to the fund. Since 1986, several factors have reduced annual deficits from about 40 percent to about 10 percent of expenditures. These factors include increased coal tax revenues, a moratorium on interest owed the general fund, and the low rate of claims approval.

²We used the latest decision on each claim to compute the latest approval rate. At the time of our review, about 13,000 claims were pending an appeal. Depending on the results of these appeals, the approval rate could change.

Program Eligibility Criteria Changed Several Times

As experience was gained with the program,³ the Congress adjusted it several times by changing financing provisions and revising eligibility criteria. The Congress first amended the Black Lung Act in 1972. The amendments (1) broadened the definition of total disability, (2) extended coverage to surface miners, and (3) provided disability benefits for orphans of deceased miners.

In 1977, dissatisfied with the low rate at which applications for benefits were approved, the Congress made further changes. It acted to remove certain restrictive provisions in the law that had prevented a large number of claimants from receiving benefits. Perhaps the most significant provision was the requirement for DOL to apply "interim" eligibility criteria until final criteria could be developed in consultation with the National Institute of Occupational Safety and Health (NIOSH). The Congress provided for the review of previously denied or pending black lung claims under the interim criteria, which were issued August 18, 1978.⁴ In conjunction with NIOSH, DOL also developed permanent medical testing criteria for determining black lung disease and total disability.

The 1980s saw the black lung program revert to more stringent eligibility criteria. On April 1, 1980, DOL introduced the permanent criteria. Under these criteria, miners had to demonstrate more severe disability than previously required to prove eligibility.

In 1981, the Congress took additional actions to reduce eligibility. The Black Lung Benefits Amendments of 1981 (P.L. 97-119)

- permitted DOL to get a second opinion on X-ray evidence, for claims filed on or after January 1, 1982, and
- eliminated the presumption of eligibility for miners with 15 years of coal mine employment who had evidence of a totally disabling chronic pulmonary or respiratory condition.

³From the start of the program in 1969 through 1973, it was administered by the Social Security Administration (SSA). SSA continued to make benefit payments to miners whose claims were filed prior to July 1, 1973. DOL is responsible for processing claims filed after that date.

⁴The effective date of the 1977 amendments was March 1, 1978.

Approval Rate in 1980s Returns to Pre-1978 Levels

Between July 1973 and the end of 1977, DOL approved about 8 percent of miners' claims. Then, however, the approval rate rose sharply. DOL approved about 50 percent of pending and previously denied claims filed under the interim criteria from March 1, 1978 to March 31, 1980. About 90 percent of all approvals made by DOL through calendar year 1988 were claims filed during this period.

When the program returned to more stringent criteria in the 1980s, the allowance rate reverted to pre-1978 levels. DOL approved about 9 percent of miners' claims filed from April 1, 1980, to December 30, 1988. Of these, two-thirds were approved initially and the remaining were approved on appeal at the ALJ level.

Besides the tightened eligibility criteria, other factors, such as reduced dust levels in coal mines and improved health of coal miners, may have contributed to the lower approval rates. We did not determine the relative effect of each of these factors nor the appropriateness of the more recent approval rate.

Standards Used to Interpret Medical Tests

On April 1, 1980, the Secretary of Labor, through regulations, established stringent new medical criteria for determining total disability due to black lung disease. The new criteria (1) required a blood gas test, (2) revised the values for the pulmonary function test, (3) included standards for X-ray evidence and physical examination, (4) instructed doctors when to administer the exercise version of the blood gas test, and (5) provided new standards for interpreting test results.

Medical experts told us that the standards DOL used to interpret medical tests performed on miners are reasonable. Also, the instructions to doctors performing the tests are reasonable to determine black lung disease and total disability. For example, when the pulmonary function test is interpreted, the new criteria require that miners demonstrate more loss of pulmonary function capability than previously required for a determination of total disability.

Additionally, the medical experts termed adequate DOL's instructions to doctors performing the exercise version of the blood gas test on miners. According to DOL's program director, this blood gas test may be dangerous to about 10 percent of miners being tested. DOL instructs physicians not to administer this blood gas test when it may be harmful to the miner.

Backlogs of Appeals to ALJs and BRB Cause Lengthy Delays

During fiscal year 1988, backlogs of cases awaiting assignment to adjudicators prevented DOL from issuing timely decisions by ALJs and the BRB. The backlog developed after large numbers of initial decisions made under the interim criteria were appealed. Mine operators, for example, appealed 75 percent of the approvals in which they were named. On the average, cases decided by ALJs during fiscal year 1988 had been in the ALJ process more than 3 years. Cases decided by the BRB took, on the average, about 2-1/2 additional years. More than half of the elapsed time during appeals involved cases sitting in backlogs.

Between fiscal years 1986 and 1990, DOL reduced the backlog of cases appealed to ALJs. DOL hired new staff and contracted with ALJs employed by other federal agencies and retirees to increase productivity. The reduction should improve the timeliness of ALJ decisions beginning in fiscal year 1990. However, the time required to decide cases at the BRB level will continue to be lengthy because of a growing backlog of cases.

With its current staff resources, BRB should be able to process about 800 cases more per year than the number of appeals expected to be received beginning in fiscal year 1991. Without an increase in these resources, we estimate that it would take the BRB about 10 years to dispose of the current backlog of cases (about 8,000).

To eliminate the backlog of cases at the BRB within 3 years, we estimate that BRB temporarily needs about 35 additional attorneys (decision writers). BRB also needs additional support staff, but we did not estimate the number needed.

Other opportunities may exist for efficiency gains. Belief that BRB's operations can be made more efficient was expressed by several DOL officials and by DOL's Inspector General (IG) in a 1986 report on BRB operations. Before increasing BRB's resources, DOL should determine if other opportunities exist to achieve efficiencies.

To accommodate the increase in decisions drafted by attorneys, additional judges would be needed temporarily. Panels of three judges review draft decisions written by attorneys and issue BRB's final decisions. The Longshoremen's and Harbor Workers' Compensation Act authorizes nine judges for the BRB, five permanent and four temporary.⁵

⁵DOL is required to follow certain procedural and other rules contained in the provisions of the Longshoremen's and Harbor Workers' Compensation Act. The nine BRB judges decide both black lung and longshore cases.

The BRB may delegate its powers to panels of judges, two of whom must be permanent. Judges serve on panels on a rotating basis. Currently, the judges appear to be working at capacity and cannot handle the temporarily increased workload.

DOL's Collections of Overpayments Exceed Costs

Black lung benefit payments begin subsequent to the initial approval. If entitlement is reversed on appeal, DOL may require the claimant to repay these benefits. When entitlement is sustained on appeal and a mining company is named as responsible, DOL requires the mining company to reimburse any benefits paid on its behalf during the appeal.

In deciding whether to collect overpayments from claimants, DOL considers (1) the relative costs and benefits of collection, (2) the financial condition of the claimant, and (3) whether collection is "against equity and good conscience." Overall, DOL's collections exceeded costs. Also, when deciding repayment based on the claimants' ability to repay, the DOL field offices we visited generally settled cases consistently. However, DOL's initial overpayment notices to claimants did not adequately explain the options for having overpayments forgiven.

Generally, the overpayment notices emphasized the option of having the debt waived only because of the claimant's inability to pay. The notices did not explain waivers whose basis was against equity and good conscience. Without providing more information on what this constitutes, most claimants probably would not know how to use this option. As a minimum, DOL's notice should include several of the examples that DOL uses in its guidelines to its claims examiners. One such example is that the claimant gave up a valuable right such as a job or other benefits to accept the black lung benefits.

Revenue From Coal Excise Taxes Inadequate to Cover Expenditures

In 1978, the Congress established the Black Lung Disability Trust Fund to transfer liability for black lung disease to the coal industry. An excise tax on the sales of coal production provided revenues for the trust fund. The Congress intended that the revenues would cover the costs of black lung benefits in cases where no mining company could be held liable.

Since 1978, coal tax revenues have only paid about 60 percent of program expenditures. Most of the trust fund's expenditures have been monthly cash payments to beneficiaries approved under the interim criteria. The trust fund borrowed from the general fund, to which it owed about \$3 billion as of the beginning of fiscal year 1989. However, the

trust fund has borrowed less from the general fund in recent years. Since fiscal year 1985, coal tax revenues have equaled about 90 percent of recorded costs. The primary reasons for the improvement have been (1) an annual increase in coal tax revenues since 1979, (2) a 5-year moratorium on the accrual of interest on money owed to the general fund, and (3) the low percentage of claims approved in the 1980s. If the moratorium is not extended past its 1990 ending date, interest on the debt alone could be about 50 percent of coal tax revenue in fiscal year 1991.⁶

Recommendations to the Secretary of Labor

The Secretary of Labor should focus management attention on the backlog of cases at the BRB. Efforts should be taken to eliminate this backlog in a reasonable period of time. These efforts should include a management review of BRB's operations to determine (1) the extent to which greater efficiencies can be achieved with existing staff and (2) the level of additional resources BRB may need to eliminate the backlog.

The Secretary should revise the Department's overpayment notices. These notices should include explanation of the "against equity and good conscience" option and how it can be used to obtain a waiver.

Recommendation to the Congress

If the Secretary of Labor adds resources to the BRB or takes other actions to eliminate the backlog of cases in a short period of time, additional judges will be needed at the BRB. The Congress should amend the Longshoremen's and Harbor Workers' Compensation Act to allow for a temporary increase in the number of panel judges at the BRB.

Agency Comments

You asked that we not obtain written comments on this report. However, we did discuss the results of our review with appropriate agency officials. Generally, the agency agreed with our observations and recommendations. This report was prepared under the direction of Franklin Frazier, Director of Income Security Issues (Disability and Welfare), who may be reached on 275-1793 if you or your staff have any questions. Other major contributors are listed in appendix VII.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this report. We

⁶This assumes that fund benefit payments and coal tax revenues remain constant.

then will send copies to the Secretary of Labor and other interested parties.

Lawrence H. Thompson

Lawrence H. Thompson
Assistant Comptroller General

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Abbreviations

ALJ	Administrative Law Judge
BRB	Benefits Review Board
DOL	Department of Labor
HHS	Department of Health and Human Services
IG	Inspector General
NIOSH	National Institute of Occupational Safety and Health
OALJ	Office of Administrative Law Judges
SSA	Social Security Administration

Miners sometimes develop black lung disease (pneumoconiosis or a chronic respiratory condition resulting from inhaling coal dust). Lung tissue is destroyed, resulting in the reduction of the lung's ability to transfer oxygen to the blood. The Federal Coal Mine Health and Safety Act of 1969 (P.L. 91-173) established a program for compensating victims of black lung disease and imposed environmental standards for dust levels in coal mines. The program pays monthly cash benefits to eligible miners or their survivors for disabling respiratory and pulmonary diseases resulting from miners' exposure to dust during coal mine employment.

Concern over the difficulties experienced by many miners with their claims for black lung benefits was expressed by Congressmen Alan B. Mollohan, Frank McCloskey, Rick Boucher, George Miller, and Austin J. Murphy. The latter is Chairman of the Subcommittee on Labor Standards of the House Committee on Education and Labor. They requested that we review the Black Lung Disability Benefits Program. Among the specific issues identified for our examination were: (1) the percentage of applications approved and denied under the program, (2) the adequacy of the medical criteria used to adjudicate claims, (3) the average time it takes to adjudicate claims and reasons for processing delays, (4) the procedures used to collect program overpayments, and (5) the status of the Black Lung Disability Trust Fund.

Background

The black lung program has two components, parts B and C. Only part C claims are discussed in this report. The parts differ as follows:

- Under part B, benefits are payable only for claims filed before July 1, 1973 (December 31, 1973, for some survivors). Thus, no new beneficiaries can be added to the rolls for part B. In fiscal year 1988, about \$980 million in benefits were paid under part B, which is administered by the Social Security Administration under the Department of Health and Human Services (HHS). Costs of the part B program are funded from the general revenues.
- Under part C, administered by the Department of Labor, nearly one-half million persons have filed claims since 1973. As of September 1989, 84,782 claimants were receiving black lung benefits under part C. Costs are supported largely by excise taxes on sales of coal, borrowing from the U. S. Treasury, or direct payments from mine operators when they are determined responsible. Program expenditures during fiscal year 1988 included \$602 million in benefits to claimants and \$55 million in administrative costs.

Claimants file for benefits at an SSA or DOL office. SSA offices route claims filed with them to the appropriate DOL office. At the DOL office, examiners arrange for medical testing, document employment history, identify liable mining companies, and make initial disability determinations.

Parties (claimants or mine operators) dissatisfied with the initial decision may appeal. The appeal process is adversarial. The mine operator may seek to prove that the miner does not meet the program's eligibility criteria or that the mine operator is not the responsible employer. Conferences sometimes are held to try to resolve differences. If still dissatisfied with the decision, any party may appeal to an administrative law judge. Further appeals may be made to DOL's Benefits Review Board. BRB decisions may be appealed to a federal circuit court of appeals and subsequently to the U.S. Supreme Court.

Establishing Eligibility for Black Lung Benefits

To be eligible for benefits, miners must prove they are totally disabled from black lung disease arising out of coal mine employment. DOL gives each miner who files a claim for black lung benefits an opportunity to substantiate the claim by a complete pulmonary evaluation. This includes a physical examination, chest X-ray, pulmonary function test, and blood gas test.

DOL uses the results of pulmonary function tests and blood gas tests to help determine whether the miner is totally disabled. Pulmonary function tests permit the identification and measurement of any breathing or pulmonary capacity impairment. Blood gas tests permit the identification and measurement of impairments involving the lung's efficiency in exchanging oxygen and carbon dioxide. When these test results, based on criteria established by the Secretary of Labor, demonstrate the miner's inability to do usual coal mine employment or other comparable gainful employment, the miner is considered totally disabled.

The primary method of establishing the existence of black lung disease is through X-ray evidence. If X-rays identify scar tissue in the miner's lungs, a physician reading the X-ray determines whether the miner is suffering from complicated black lung (large lesions usually more than 1 centimeter in diameter) or simple black lung (small lesions). Claims for benefits cannot be denied, however, on the basis of a negative chest X-ray alone. The act provides that a physician can use other medical tests to make a determination of the existence of black lung disease.

The act currently contains two major presumptions for claimants filing after 1981—one rebuttable and one irrebuttable—to assist claimants in establishing their eligibility for black lung benefits.¹

**Irrebuttable Presumption
of Total Disability From
Black Lung Disease**

If it is established that a miner suffers or suffered at death from "complicated" black lung disease, there is a presumption that the miner is totally disabled by, or that death was due to, the disease, or that the miner was totally disabled by the disease at the time of death. If this presumption can be established, it cannot be rebutted by contrary evidence thereby allowing miners to meet a basic eligibility criterion of being totally disabled or of having died from black lung disease.

**Presumption of
Relationship to
Employment in Mines**

If a miner who is suffering or suffered from black lung disease was employed in a coal mine or mines for 10 years or more, there is a rebuttable presumption that the disease arose out of coal mine employment. Unlike the presumption described above, this one may be rebutted by contrary evidence to show that there is no connection between the disease and the claimant's coal mine employment.

**Scope and
Methodology**

DOL provided us with automated data on approvals and denials of claims (including reasons for denials) for fiscal years 1973-88. For our analysis, we used the latest decision of record including decisions made on appeal by ALJs or the BRB. Additionally, we analyzed DOL's reasons for approval or denial of claims at the initial level of the process.

We discussed DOL's medical eligibility criteria with seven medical doctors with an expertise in black lung disease. Others with whom we met or spoke included

- representatives from the United Mine Workers Union;
- DOL district office officials in Johnstown (Pennsylvania), Columbus (Ohio), and Lakewood (Colorado);
- ALJs in San Francisco, Pittsburgh, Camden (New Jersey), Cincinnati, and Washington, D.C.;

¹ The availability and use of presumptions has not remained constant over the life of the black lung program, as the Congress and DOL have several times re-examined the eligibility requirements of the program.

Appendix I
Introduction

- the National Black Lung Association and its West Virginia and Virginia chapters; and
- DOL officials in the Mine Safety and Health Administration.

With medical experts,² we discussed the criteria used to interpret medical tests performed on miners and compared them with those used for interpreting similar medical tests in claims for state workers' compensation programs. We compared criteria used for X-rays, pulmonary function tests, and blood gas tests.

Using DOL's automated data, we identified average case processing times at each level of the adjudicative process and identified stages at which delays occurred.

In reviewing DOL's overpayment collection policies and procedures, we discussed them with DOL officials at headquarters and in six district offices. Also, we compared the costs to collections. We judgmentally selected cases in three district offices to determine how consistently these field office personnel applied DOL's collection policies and procedures.

Concerning information on the trust fund, we (1) identified revenues and disbursements using DOL's status of funds reports and (2) determined whether DOL is more frequently naming responsible mine operators.

Our review began in October 1988 and concluded in August 1989. We did not verify the accuracy of DOL's automated data or determine the accuracy of DOL's financial statements reporting trust fund activity. Except for these limitations, we carried out this review in accordance with generally accepted government auditing standards.

²The medical experts included four officials from NIOSH, a faculty member from West Virginia University's medical school, a physician noted for his expertise with blood gas tests, and a physician noted for his expertise in interpreting X-ray evidence.

Approval Rate for Black Lung Claims Adjudicated by DOL

About 90 percent of all approvals of miners' black lung claims were made using temporary criteria in effect during a 2-year period from March 1, 1978 to March 31, 1980. Fewer than 10 percent of miners' claims adjudicated under part C before and after this period were approved.¹

Since DOL began administering the Black Lung Disability Benefits Program, it has adjudicated miners' claims under three different sets of eligibility criteria. In 1972, the Congress liberalized the criteria in an effort to increase the approval rate. However, under these criteria, DOL approved only about 8 percent of miners' claims.

In 1978, dissatisfied with the low approval rate, the Congress (1) amended the act to remove certain restrictive provisions in the law that had prevented a large number of claimants from receiving benefits and (2) mandated that DOL develop criteria for medical tests to evaluate a claim of total disability. Using interim regulations, DOL approved about 50 percent of claims filed between March 1, 1978 and March 31, 1980.

In 1980, DOL introduced more stringent criteria and the Congress further tightened eligibility in 1982. Since March 31, 1980, DOL approved about 9 percent of the miners' claims filed. We did not determine the appropriateness of the approval rate.

An account of the program's eligibility criteria and claims approval rates under DOL follows.

Efforts by the Congress to Liberalize Eligibility in 1972

In an effort to increase the program's approval rate, the Congress amended part C of the Black Lung Act in 1972. The amendments (1) broadened the definition of total disability, (2) extended coverage to surface miners, and (3) added a rebuttable presumption of eligibility for miners with 15 years of coal mine employment who demonstrated symptoms of black lung disease. Instead of requiring that miners be unable to engage in substantial gainful employment to qualify for total disability, the standard up to that time, the amendments required only that miners be unable to perform jobs requiring them to use their coal mine skills. This permitted miners to work in less demanding, noncoal-mine employment and remain eligible for black lung benefits. The rebuttable presumption of eligibility for miners with 15 years of coal mine

¹We do not include survivors' claims in our analysis.

employment and evidence of black lung disease was added to ease evidentiary burdens. However, only about 8 percent of miner claims decided under the criteria were approved. Also, according to DOL, the medical standards being applied were quite stringent.

Restrictive Provisions Removed and New DOL Regulations Mandated

Under liberalized "interim criteria" mandated by the Congress in 1978, approvals of miner claims increased to about 50 percent. Most of these approvals were made administratively at one of DOL's district offices and did not involve appeals. Only about 1 percent of the approvals resulted from an appeal.

The 1977 amendments removed from the law active provisions that had prevented a large number of miners from receiving benefits and mandated that DOL develop regulations to implement the revised law. Going beyond the medical definition of pneumoconiosis,² the Congress again broadened the statutory definition of black lung disease to include respiratory and pulmonary impairments arising out of coal mine employment.

Also, the amendments expanded coverage to individuals employed in or around a coal mine in the extraction, preparation, or transportation of coal. Standards applicable to medical tests were relaxed by (1) restricting DOL's authority to use a second opinion on X-ray readings provided by claimants as evidence of their disease and (2) prohibiting the development of additional medical or other evidence if the evidence on file was sufficient to approve a claim.

But the most significant provision in the amendments was the requirement that DOL develop new eligibility criteria in regulations. The amendments mandated that DOL apply interim criteria in reviewing previously denied or pending black lung claims. DOL also was required to consult with the National Institute of Occupational Safety and Health in developing permanent medical testing criteria for more accurate diagnosis of black lung disease and total disability.

DOL issued interim eligibility criteria on August 18, 1978.³ Using presumptions contained in the act, DOL developed an "interim presumption." Generally, the new criteria presumed eligibility for miners with at

²A lung disease produced by the deposition of coal dust and the lungs' response to the retained coal dust.

³The provisions of the 1977 amendments applied to claims beginning March 1, 1978.

least 10 years of coal mine employment and evidence of totally disabling respiratory or pulmonary disease. These new criteria remained in effect for claims filed prior to March 31, 1980.

Criteria Tightened in 1980 and 1981

The claims approval rate was lowered for claims filed after March 31, 1980. This was the effective date of permanent, more detailed, and stringent standards that DOL developed in consultation with NIOSH. Amendments in 1981 further tightened eligibility criteria by eliminating a series of provisions that had been enacted previously to help particular groups of miners or survivors obtain entitlement.

The permanent regulations implemented a more comprehensive medical testing procedure. They required miners to conclusively prove black lung disease and total disability through the results of medical tests. Miners also had to demonstrate more loss of pulmonary function capability than previously required for eligibility.

In 1981, the Congress also took steps to reduce eligibility. The Black Lung Benefits Amendments of 1981 (P.L. 97-119) eliminated a restriction on DOL's authority to use a second opinion on X-rays that might show the absence of black lung disease, for claims filed on or after January 1, 1982. The amendments also eliminated the presumption of eligibility for miners with 15 years of coal mine employment who had evidence of a totally disabling chronic pulmonary or respiratory disease.

Approval Rate in 1980 Returns to Pre-1978 Levels

The approval rate returned to levels prior to the 1977 amendments under part C. DOL approved about 9 percent of miner claims filed from April 1, 1980, to December 30, 1988, about one-third of these on appeal. (See table II.1.)

Appendix II
Approval Rate for Black Lung Claims
Adjudicated by DOL

Table II.1: Approval Rate for Applications by Miners for Black Lung Benefits (Before and After Apr. 1, 1980)

Status of claims	Claims filed			
	Before Apr. 1, 1980		After Mar. 31, 1980	
	No.	Percent	No.	Percent
Totals decided	186,538	—	66,177	—
Approved:				
On initial decision	87,285	47 ^a	4,219	6 ^a
On appeal (to ALJ)	2,075 ^b	1	1,867 ^b	3
On appeal to BRB	71 ^c	^d	6	^d
Totals approved	89,431	48	6,092	9

Note: Initial approvals from April 1, 1980, through December 31, 1981, were 11 percent. Since December 31, 1981, when the Congress again changed eligibility, the initial approval rate has been about 4 percent.

^aThe approval rate through 1977 was 8 percent.

^bRepresents the difference between approvals and denials of appealed initial decisions changed by ALJs.

^cRepresents the difference between approvals and denials of appealed ALJ decisions changed by the BRB.

^dThe effect of BRB reversals on the approval rate was negligible.

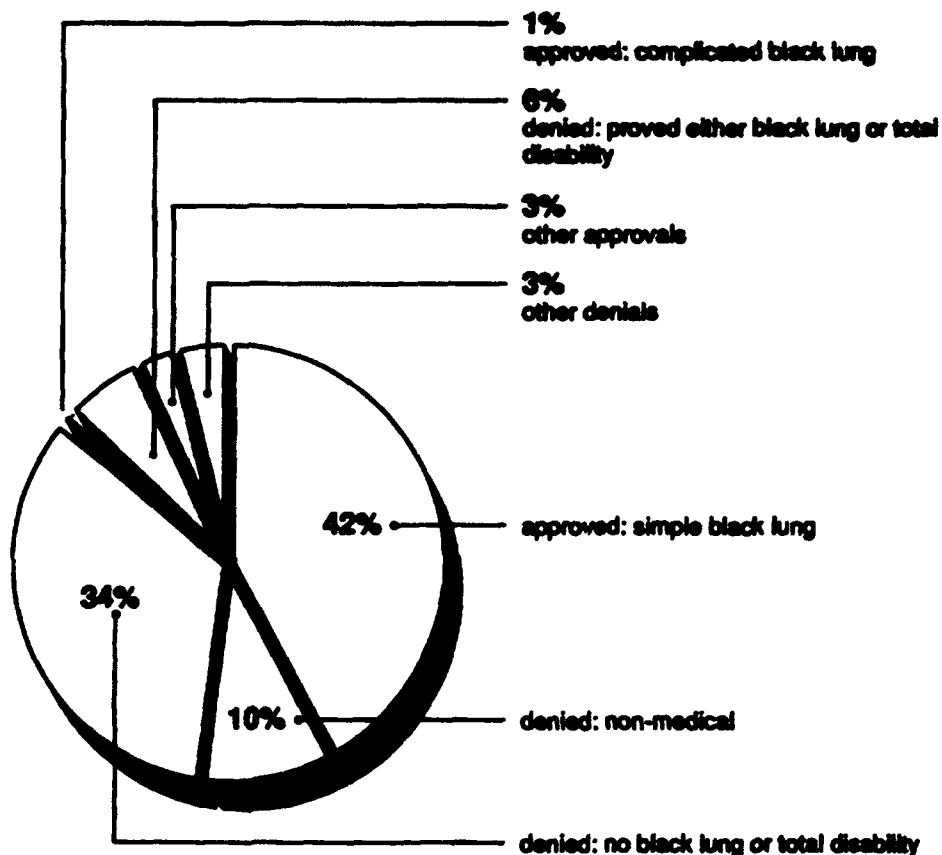
In initial decisions, DOL approved about 4 percent of the miners' claims filed during fiscal year 1988. We did not try to determine whether the current approval rate is reasonable or not. Also, we were unable to determine the effect, independently or collectively, of certain factors on the approval rate. Such factors included the tightened eligibility criteria and adjudicative process, the decline in applications for black lung benefits, the improved health of coal miners, and reduced dust levels in coal mines.

Tightened Eligibility Criteria

We compared claims filed before April 1, 1980, with claims filed under current criteria. Most of the increase in denials involved miners' failure to meet medical rather than nonmedical criteria. In most denied cases, the miners could not demonstrate either of the two basic medical criteria, total disability or black lung disease. However, the percentage of denied miners who proved either black lung or total disability, also increased significantly. (See figs. II.1 and II.2.)

The number of miners denied for nonmedical reasons did not change significantly. The nonmedical category includes claims not filed on time, claimants not considered coal miners, and miners who failed to provide evidence or were uncooperative.

Figure II.1: DOL's Reasons for Approval or Denial of Miners' Claims Filed Before April 1, 1980



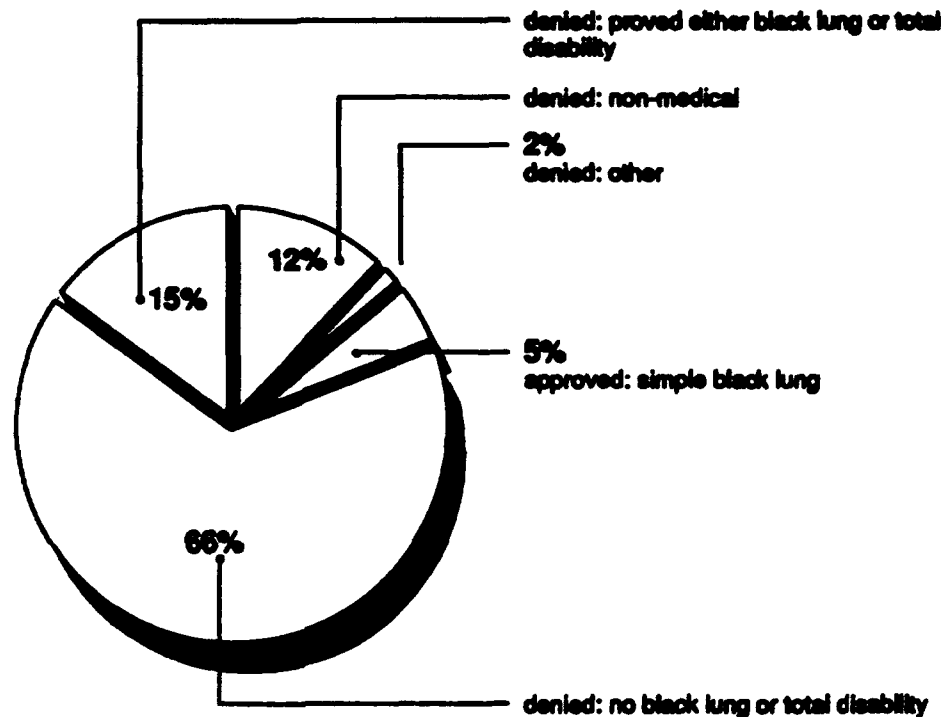
Note: These are initial discussions only

Applications Decrease in 1980s

The number of miners applying for benefits significantly declined during the 1980s. Applications peaked during 1978, when the most liberal eligibility criteria were in effect. Since then, the numbers of applications have declined, reaching the lowest level in the program's history during fiscal year 1988, at 3,104 applications. (See fig. II.3.) Also, a decrease in the number of underground miners may have contributed to the decline in applications. DOL reported that 79,000 miners worked in underground mines in 1988, down from 102,000 in 1970.

Appendix II
Approval Rate for Black Lung Claims
Adjudicated by DOL

Figure II.2: DOL's Reasons for Approval or Denial of Miners' Claims Filed After March 31, 1980



Note: These are initial discussions only.

Coal Miners' Health Improves

Seven black lung medical experts with whom we spoke suggested that fewer miners today suffer from totally disabling respiratory conditions. The primary reason cited was improved coal mine environmental conditions resulting from the imposition of dust standards. Also, the experts said that most cases of black lung found today are usually marginal (simple black lung), making diagnosis very difficult.

A 1969 study performed by the Department of Interior's Bureau of Mines (before dust standards) showed that dust levels in a sample of 29 underground mines averaged 5.6 milligrams per cubic meter. In 1988, DOL inspectors found that the average dust level in underground coal mines was less than 1.3 milligrams per cubic meter. The 1969 act initially required the average concentration of respirable dust in the work area to be no more than 3.0 milligrams of dust per cubic meter of air beginning in June 1970. As of December 30, 1972, the standard required a reduction in the dust level to 2.0 milligrams per cubic meter. Before these standards, dust levels in coal mines were unregulated.

Appendix II
Approval Rate for Black Lung Claims
Adjudicated by DOL

Figure II.3: Applications for Black Lung Benefits Filed in Fiscal Years 1973-88



Based on the date of application as provided by DOL

Medical Experts Call DOL's Medical Criteria Reasonable

On April 1, 1980, DOL implemented its new medical criteria for determining whether miners are totally disabled from black lung disease. The new criteria required a blood gas test, revised the values for the pulmonary function test, and included standards for X-ray evidence and physical examination. The revised values used for interpreting these tests were more stringent than standards previously used.

Existence of black lung disease is established primarily through X-rays used to identify whether coal dust concentrations exist in the miner's lungs. When coal dust is found, X-ray evidence permits a determination of whether the concentrations are large (signifying complicated black lung disease) or small (simple black lung disease). Claims for benefits cannot be denied, however, on the basis of a negative chest X-ray alone. A physician can make a determination of the existence of black lung disease based on other medical tests.

Total disability is determined through pulmonary function tests and blood gas tests. Pulmonary function tests permit the identification and measurement of any breathing or pulmonary capacity impairment. Blood gas tests permit the identification and measurement of impairments involving the lung's efficiency in exchanging oxygen and carbon dioxide. When these test results, judged by criteria established by the Secretary of Labor, demonstrate the miner's inability to perform usual coal mine tasks, the miner is considered totally disabled.

The new criteria require miners to demonstrate a pulmonary function capability of 60 percent or less of normal compared with the 80 percent or less previously required for a determination of total disability. Doctors considered experts in pulmonary diseases with whom we discussed the new standards called them reasonable.

State workers' compensation programs in Kentucky and West Virginia generally required miners seeking benefits under the programs to demonstrate more evidence of total disability than did DOL for black lung benefits. For example, as stated above, DOL regards a miner as totally disabled if the miner has 60 percent or less of normal pulmonary function capability. Under West Virginia's workers' compensation program, a miner must have 50 percent or less to be considered totally disabled. Under Kentucky's program, a miner must have 55 percent or less.¹

¹State workers' compensation programs generally define total disability in broader terms than those contained in federal criteria. Most states define total disability as the inability to engage in any gainful employment. Also, state programs provide for partial disability benefits.

Appendix III
Medical Experts Call DOL's
Medical Criteria Reasonable

According to DOL's program director, the exercise version of the blood gas test can be hazardous to about 10 percent of miners tested. DOL's guidance to doctors who administer such tests instructs them not to administer the test if it imposes a hazard to the health of the miner. The seven medical experts that we consulted concerning the guidance said that the instructions are adequate.

Claims Processing Times Lengthy, Backlogs Significant at Benefits Review Board

Processing times for initial decisions on claims for black lung benefits during fiscal year 1988 appeared reasonable, but there were lengthy delays in both the administrative law judge and Benefits Review Board decision processes. Timeliness of the ALJ decision process should improve beginning in fiscal year 1990, when the backlog of cases will be eliminated. Processing times at the BRB will continue to be excessive, however, because there is a backlog of cases waiting to be processed.

At the initial and ALJ levels, our analysis of claims processing involved only black lung cases. At the BRB however, our analysis included black lung and longshore cases. As required by law, DOL applies provisions of the Longshoremen's and Harbor Workers Compensation Act to process appeals of both black lung and longshore cases.

Initial Claims Processed Within 5 Months

DOL processed initial claims within about 5 months during fiscal year 1988. This surpassed its processing goal of 6 months. Claims examiners we interviewed said that most of their time was spent obtaining medical tests and identifying responsible mine operators. We did not identify opportunities to shorten this process.

Timeliness of ALJ Decisions Should Improve

About 30 percent of initial decisions on black lung claims usually result in a hearing before an ALJ. ALJs consider all evidence previously submitted for the initial decision along with any new evidence. For ALJ decisions made in fiscal year 1988, over 3 years elapsed on average between the filing of an appeal and the decision and order by an ALJ. DOL's Chief ALJ believes that the entire process, beginning with the request for a hearing and ending with an ALJ decision, should take about 1 year.

Most of the time (21 months) to process cases at the ALJ level resulted from a backlog of cases awaiting assignment to ALJs because of the 1977 amendments. That legislation required the re-review of all previously denied and pending claims. DOL's Office of Administrative Law Judges (OALJ) reduced the backlog of cases awaiting an ALJ decision from more than 22,000 at the beginning of fiscal year 1986 to 4,901 at the beginning of fiscal year 1990 (see table IV.1). OALJ increased the annual number of black lung cases disposed of by about 25 percent during fiscal years 1987 and 1988. This was accomplished primarily by increasing the number of ALJs through new hires and contracting with retired ALJs. During the same period, the numbers of cases appealed to OALJ decreased about 28 percent.

**Appendix IV
Claims Processing Times Lengthy, Backlogs
Significant at Benefits Review Board**

**Table IV.1: ALJ Case Activity (Fiscal Years
1982-89)**

Fiscal year	Undecided cases at beginning of fiscal year	Appeals received	Dispositions	Undecided cases at end of fiscal year
1982	13,876	6,140	7,220	12,796
1983	12,796	7,779	4,883	15,692
1984	15,692	10,286	5,425	20,553
1985	20,553	8,412	6,848	22,117
1986	22,117	5,892	8,196	19,813
1987	19,813	4,527	10,063	14,277
1988	14,277	3,905	10,292	7,890
1989	7,890	3,153	6,142	4,901

Source: OALJ

Reductions in the backlog of cases should improve processing time at the OALJ. With the backlog reduced to 4,901 cases on September 30, 1989, the Chief ALJ told us that it is at a manageable level. He said this should enable them to process all appeals within their goal of 1 year.

The remaining 17 months involve case transmittal and the ALJ decision process. About 10-1/2 months were spent in the ALJ decision process. The remaining time (about 6-1/2 months) involved delays in sending cases from the district offices to the OALJ in Washington, D.C. Since these cases were initially decided, however, DOL changed its procedures for sending cases from the district offices to the OALJ. From fiscal year 1987 through December 1989, district offices took 56 days on average to send cases to OALJ.

Backlog of Cases Awaiting Adjudication at BRB

Cases decided by the BRB during fiscal year 1988 took on average about 2-1/2 years. More than half of the elapsed time during these appeals involved cases sitting in backlogs.

The BRB adjudicates appeals of ALJ decisions made under the black lung program and the Longshore and Harbor Workers' Compensation Program. About 80 percent of BRB's workload involves black lung cases. When dissatisfied parties appeal ALJ decisions, the BRB reviews the complaint and decides whether substantial evidence supports the finding of the ALJ. Attorneys perform the initial analysis of the complaints and draft decisions. After review by supervisory attorneys, the draft decisions are forwarded to panels of judges for a decision.

Appendix IV
Claims Processing Times Lengthy, Backlogs
Significant at Benefits Review Board

Most of the over 2 years it took for cases to be decided by BRB during fiscal year 1988 involved cases sitting in backlogs awaiting assignment to attorneys. Cases sat in backlogs more than 15 months on average. The remaining time involved (1) about 2-1/2 months for BRB to receive the case folder from a district office, (2) about 7 months for the filing of complaints and any responses, and (3) about 2 months for BRB to issue decisions after the assignment of the case.

Productivity at the BRB has not kept pace with increased appeals over recent years, as shown in table IV.2. The backlog of cases awaiting review increased to about 8,000 by the end of fiscal year 1989. To increase productivity and subsequently reduce processing time, DOL temporarily may need to increase attorney and judge resources at the BRB. However, DOL should first closely examine BRB's organization and operations to see if other opportunities exist to achieve productivity gains.

Table IV.2: Benefits Review Board Case Activity (Fiscal Years 1982-89)

Fiscal year	Undecided cases at beginning of fiscal year	Appeals received	Dispositions	Undecided cases at end of fiscal year
1982	2,763	2,556	1,011	4,308
1983	4,308	3,057	1,319	6,046
1984	6,046	2,892	2,317	6,621
1985	6,621	3,131	2,394	7,358
1986	7,358	3,172	3,607	6,961
1987	6,961	3,567	3,516	7,123
1988	7,123	4,526	4,101	7,548
1989	7,548	4,459	4,021	7,986

Source: BRB

Added Staff May Be Needed to Eliminate Backlog

DOL officials believe that the number of appeal receipts will sharply decline in 1991 and may continue to decline in future years. BRB gave us estimates of the number of appeals it expects to receive in fiscal years 1990 and 1991. It is difficult, however, to make reliable predictions of the number of receipts beyond 1991. For fiscal year 1990, BRB currently is operating at 74 attorney staff years for writing decisions. Supervisory attorneys who review draft decisions account for about 22 percent of BRB's total attorney staffing. This level of staffing should dispose of about 4,000 cases, about the number it expects to receive this year, BRB officials said. This still would leave a backlog of about 8,000 cases at the end of fiscal year 1990. BRB assumes each attorney staff year accounts

for 53.65 case dispositions yearly. Using this productivity level, it would take an additional 149 attorney staff years to process this backlog of cases.

Because BRB's future receipts are expected to be below 1990 levels, current staff at the BRB will be able to reduce the backlog further. For example, if there are only about 3,200 appeals received in 1991 (BRB estimated 3,194 for its 1991 budget), current staffing (74 attorney staff years) could dispose of about 800 backlogged cases. If annual receipts and attorney (nonsupervisory) staffing remained at about 3,200 cases and 74 staff years, respectively, it would take about 10 years to dispose of the backlog.

We analyzed the possible effects of adding staff temporarily to reduce the backlog. To illustrate the probable effects of adding temporary staff for a 3-year period beginning in 1991, we assumed that annual receipts would be about 3,200 cases, and current staffing could dispose of 4,000 cases. If staffing remained at 74 attorneys, this would leave an estimated backlog of about 5,600 cases at the end of the 3-year period. An additional 104 attorney staff years, or about 35 per year for 3 years, would be needed to eliminate this remaining backlog.

If attorney staff are added, BRB would need some increase in other aspects of its operations, such as support staff. We did not consider these in our projections.

Other Opportunities for Productivity Gains

Several DOL officials told us they believe BRB's operations can be made more efficient. This also was stated by DOL's Inspector General (IG) in a 1986 report on BRB's operations. Before increasing BRB's resources as we projected above, DOL should determine if other opportunities exist to achieve efficiencies. The multilevel review process cases generally go through before final disposition was one area cited by the IG. While the BRB adopted some of the IG's recommendations, it still retains many layers of supervisory review. We identified many cases that did not seem to require the levels of review currently being performed. We discussed our conclusions with BRB's Chief Counsel, who generally agreed that further efficiencies can be achieved in the review process.

Also, as stated above, about 22 percent of BRB's attorney staff are supervisors and do not write decisions on cases. While an increase in staffing appears to be the only way to eliminate the backlog in a relatively short period of time, DOL management may want to examine the ratio of about

one supervisor for every four staff attorneys to determine if it is warranted. Placing some of these supervisors temporarily in the "line" to write decisions may increase case dispositions and further streamline the review process.

In our closing discussions with DOL officials, we discussed the possible need for a detailed management review of BRB's operations and suggested such a review may be desirable before resources are added to BRB. The officials agreed with this approach and indicated they plan to begin such a review in the near future.

**Number of BRB Decisions
Limited by Availability
of Judges**

Panels of three judges review draft decisions written by attorneys and issue DOL's final decisions. The Longshore and Harbor Workers' Compensation Act authorizes nine judges—five permanent and four temporary. The BRB may delegate its powers to panels of three judges, two of whom must be permanent. Judges serve on panels on a rotating basis.

The nine judges should be expected to issue between 4,000 and 4,350 final decisions per year, BRB officials told us. They believe it would be unwise to expect the judges to exceed this level. If BRB is going to eliminate the backlog sooner than the 10 years we discuss on page 28, it will have to increase the number of judges. For example, to eliminate the backlog in 3 years beginning in fiscal year 1991, the panels of judges must dispose of almost 5,900 cases yearly. The current number of judges would not be able to handle this increased workload. To accommodate the increased workload, additional judges would be needed temporarily.

DOL's Debt Collection Procedures

Collections by the Department of Labor of overpayments exceeded costs even though DOL collected only about one out of every three dollars settled. Also, when deciding repayment based on the claimants' ability to repay, the three offices we visited were generally consistent. However, the initial overpayment notices did not fully explain the options available to the claimants in handling their debt.

DOL collects money owed the trust fund by mine operators and claimants. Generally, these debts result from appeals by mine operators. In about 75 percent of the initial approvals involving a responsible mine operator, the mine operator appeals the decision. Until all appeals are completed, claimants receive benefits from the trust fund. If the original decisions remain unchanged, responsible mine operators must reimburse the trust fund for the benefits paid to claimants on their behalf. If the initial decision is later reversed, any benefits received during this period are considered overpayments to the claimants and DOL may require repayment.

DOL pursues collection of all overpayments owed by mine operators. For claimants, however, DOL bases its decision on whether to collect on (1) the cost benefit of collection, (2) the financial condition of the claimant, or (3) whether collection is against equity and good conscience.

Overpayment Collections Exceed Cost

Amounts collected significantly exceeded the costs of black lung program overpayment collection (see table V.1 for costs, and collections). The amounts collected from claimants alone in fiscal year 1988 were more than the total costs of all black lung program debt collection activities. In fiscal year 1988, DOL collected about seven dollars for every dollar spent on collection efforts.

Appendix V
DOL's Debt Collection Procedures

Table V.1: Collecting Overpayments from Claimants and Mining Companies: Costs and Collections (Fiscal Years 1988-9)

Dollars in thousands		
Collection category	Amount collected	
	1988	1989 ^a
Mining companies:		
Reimbursement of benefits paid	\$17,718	\$16,360
Interest	4,079	6,747
Totals collected	\$21,797	\$23,107
Claimants:		
Overpayments settled:	21,066	19,548
Write-offs ^b	(4,307)	(4,700)
Waivers	(10,117)	(9,338)
Totals collected	\$6,642	\$5,510
Totals, all collections	\$28,439	\$28,617
Costs to collect:		
Estimated costs ^c	4,272	4,935
Difference between collections and costs	\$24,167	\$23,683

^aAmounts recorded by DOL through the third quarter.

^bUsually occur when an overpaid miner dies before the account is settled.

^cBased on the estimated time the district offices and the national offices spend on debt collection activities.

DOL pursues collection of all overpayments owed by mine operators. For claimants, however, DOL provides guidance to its district office staff on deciding whether to initiate or stop collection actions. The guidance provides that designated officials, on a case-by-case basis, may take anticipated costs of required administrative actions into consideration when determining whether to collect or end collection action on debts. This guidance is in accordance with Federal Claims Collection Standards.

Notices Received by Claimants Inadequate

DOL's initial overpayment notices to claimants do not adequately explain the options available to have overpayments forgiven. Claimants may apply for waiver of their DOL-declared debt if they prove (1) they are unable to pay or (2) that repayment is against equity and good conscience.¹ Generally, the notices emphasize the option of having the debt waived because of the inability to pay. The notices do not provide an explanation of waiver based on being against "equity and good conscience." Without more information, most claimants probably would not know how to use this option. As a minimum, we believe DOL's notice

¹In assessing ability to pay, DOL examines the miners' income, assets, expenses, and dependents. Assets such as the miner's home and car are not considered.

should include several of the examples that DOL uses in its guidelines to its claims examiners.

When deciding waivers based on repayment being against equity and good conscience, DOL considers whether the claimant (1) gave up a valuable right (e.g., a job that he or she cannot get back) to accept black lung benefits; (2) changed his or her position for the worse (e.g., a dependent child had been able to attend college because of the monthly benefits); and (3) depended on erroneous information in acceptance of the benefits (e.g., he or she was not informed that the benefits might have to be repaid).

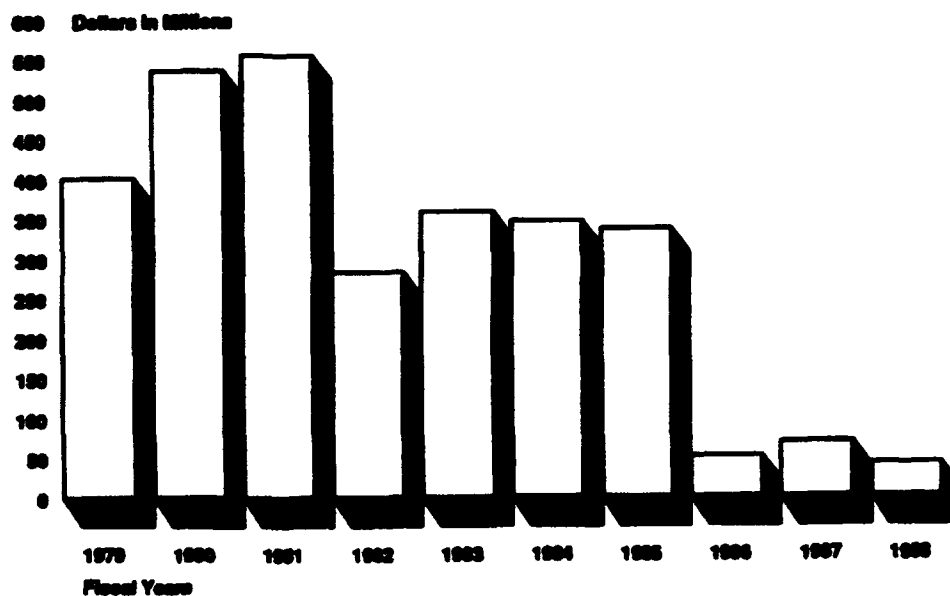
After reviewing a judgmentally selected sample of folders in three district offices for cases in various payment and nonpayment status, we found that DOL made waiver decisions consistently in most cases.

The Black Lung Disability Trust Fund

The Congress established the Black Lung Disability Trust Fund to transfer the costs of the black lung program to the coal industry. The trust fund pays program administrative costs and monthly disability benefits when no coal mine operator is assigned liability for an approved claim. Most of the trust fund's expenditures are the result of congressional actions in 1977 and 1981 that assigned the fund liability for several groups of beneficiaries.

The trust fund is financed primarily through an excise tax on the sale of coal. However, if the tax revenue is insufficient to cover expenditures, the Secretary of Labor can borrow from the federal government's general fund. Each year (from 1979 through 1988), coal taxes have been inadequate to cover program expenditures. The trust fund borrowed nearly \$3 billion dollars from the Treasury during that time (see fig. VI.1).

Figure VI.1: Funds Borrowed by Black Lung Disability Trust Fund From the Treasury (Fiscal Years 1979-88)



The trust fund's need to borrow from the general fund has been reduced over recent years. Yearly coal tax receipts are now about 90 percent of administrative and benefit costs. Over the life of the program, they have equaled about 60 percent. Also, the Congress imposed a moratorium on the accrual of interest on money borrowed from the general fund. The current moratorium on accrual of interest expires at the end of fiscal

year 1990. If the Congress does not act to extend the moratorium or increase coal taxes, interest on the debt alone could be again about 50 percent of coal tax revenue in fiscal year 1991.

Trust Fund Made Liable for Most Approvals

Liability for about 91 percent of miner claims filed before April 1, 1980, has been assigned to the trust fund. The 1977 amendments assigned to the trust fund liability for claims in which the miner's last coal mine employment was before 1970.¹ Because coal companies and their agents generally opposed accepting liability for approvals of claims readjudicated under the "interim criteria," the Congress forgave them liability in the 1981 amendments.

The rate at which mining companies are named as liable, however, increased to 38 percent for claims filed since March 31, 1980. For initial decisions made during 1988, the liability for about 52 percent of approvals was assigned to mining companies.

Coal Tax Revenues Do Not Cover Costs

The Congress has increased the coal tax rate twice since 1977. The yearly amount of coal excise taxes collected increased from \$232 million in 1979 to \$601 million in 1988, shown in table VI.1.

Table VI.1: Coal Tax Revenues (Fiscal Years 1979-88)

Dollars in thousands

Fiscal year	Coal tax revenues
1979	\$232,056
1980	251,288
1981	237,097
1982	426,620
1983	490,731
1984	525,422
1985	548,356
1986	561,158
1987	574,769
1988	601,279

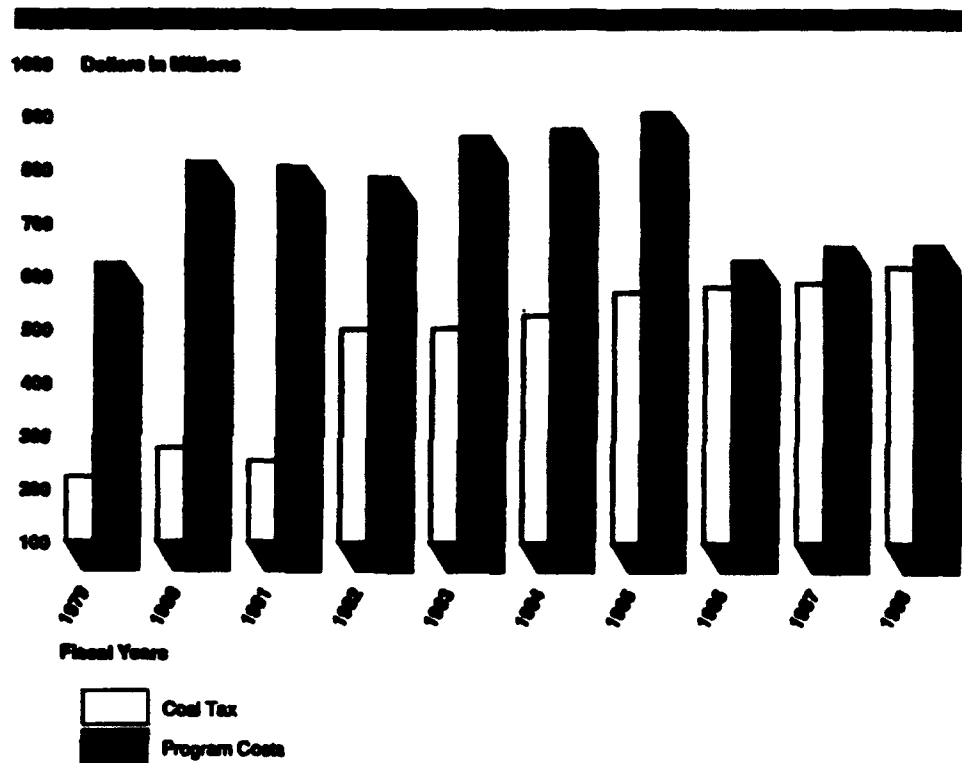
But the tax revenues have been insufficient to cover program expenditures. Through the end of fiscal year 1988, the trust fund has borrowed

¹ Prior to these amendments, DOL reported to the Congress that responsible operators were named in 32 percent of the cases adjudicated.

Appendix VI
The Black Lung Disability Trust Fund

about \$3 billion. More recently, however, tax revenues have covered about 90 percent of the trust fund costs, as figure VI.2 shows.

Figure VI.2: Coal Tax Receipts Compared With Program Costs (Fiscal Years 1979-88)



The Congress prohibited the charging of interest on amounts owed by the trust fund to the general fund during fiscal years 1986 through 1990. The estimated cost of this 5-year moratorium is about \$2 billion.

Major Contributors to This Report

Human Resources Division, Washington, D.C.

Barry D. Tice, Assistant Director, (301) 965-8920
Cameo A. Zola, Assignment Manager
Regg Hatcher, Evaluator-in-Charge
Ann V. White, Evaluator
C. Robert DeRoy, Evaluator (Computer Science)
Virginia T. Douglas, Reports Analyst
Joyce W. Smith, Secretary

Cincinnati Regional Office

Daniel L. McCafferty, Regional Management Representative
Vern Nieporte, Evaluator